In the High Court of Judicature at Madras

Dated:27.09.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. TAMILVANAN

Habeas Corpus Petition No.391 of 2006

Muthumariappan .. Petitioner/Detenu

vs.

1. The State of Tamil Nadu
   rep. by the Secretary to Government
   Public (SC) Department
   Fort St. George, Chennai 60 009.

2. The Union of India rep. by
   The Secretary to the Government
   Ministry of Finance,
   Department of Revenue
   (COFEPOSA-UNIT), New Delhi.

3. The Superintendent of Central Prison
   Central Prison, Chennai 600 003. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus as stated therein.

For petitioner : Mr.B.Kumar, SC for
Mr. S. Palanikumar
For respondents 1 and 3 : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor
Mr. P. Kumaresan, ACGSC for R.2

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ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

In this petition, the petitioner by name Muthumariappan, challenges his detention order dated 30.03.2006 passed by the first respondent herein, detaining him under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974).

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2. Heard the learned senior counsel for the petitioner, learned Additional Public Prosecutor for respondents 1 and 3 and learned Additional Central Government standing counsel for second respondent.

3. At the foremost, Mr. B. Kumar, learned senior counsel for the petitioner submitted that when the detenu disputed the value of the goods seized by the Customs Department, even after the order of the Additional Chief Metropolitan Magistrate, E.O.I, Chennai to refix the value within 25 days from the date of receipt of the order, the failure on the part of the officials to comply with the same vitiates the impugned order of detention. He further contended that inasmuch as the valuation is material/jurisdictional aspect, detention order passed by the detaining authority without taking note of the Circular issued by the Central Government and the directions issued by the learned Magistrate is liable to be quashed on the ground of non-application of mind.

4. Elaborating the above contentions, learned senior counsel submitted that it is the definite case of the detenu that the seized goods were of lesser value, but the officers assessed the same excessively. It is stated that the assessment of the officers is not supported by any cogent material and it is contrary to the customs valuation. It is also brought to our notice that the detenu has requested the sponsoring authority to consider and revalue the seized goods by way of representation, but the sponsoring authority failed to revalue the goods seized under mahazar. In this regard, learned senior counsel for the petitioner has placed before us the order of the Additional Chief Metropolitan Magistrate, E.O.I, Chennai-8, dated 21.03.2006 made in M.P.No.662 of 2006. The said petition was filed by the petitioner/accused/detenu seeking direction to the respondent, viz., Superintendent of Customs (Air) Prosecution Unit, Customs House, Chennai to revalue the goods under seizure in R.R.No.5/2006 and the learned Judge, by order dated 21.03.2006, accepted the case of the petitioner and issued direction to revalue the goods under seizure in R.R.No.5/2006 within 25 days from the date of order.

5. It is not in dispute that the sponsoring authority has not revalued the goods as directed by the Additional Chief Metropolitan Magistrate. No doubt, the learned Additional Public Prosecutor has brought to our notice that against the order of learned Additional Chief Metropolitan Magistrate, the Department filed a Criminal Revision Petition before this Court. But, except copy of the grounds of revision, no other details are available. In the course of arguments, learned Additional Public Prosecutor submitted that this Court has entertained the revision and ordered notice on 19.07.2006. There is no doubt that the valuation of the goods brought into the country is relevant, because if it is below Rs.5 lakhs, as per the Circular, no arrest will be made. Added to this, as observed earlier, though an order was passed by the learned Additional Chief Metropolitan Magistrate even on 21.03.2006, to revalue the goods

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under seizure within 25 days from the date of order, the fact remains, the sponsoring authority neither revalued the same within the time as directed by the Court nor obtained an order staying the order passed by the learned Additional Chief Metropolitan Magistrate. We have already referred to the fact that in the representation a specific reference has been made regarding the excess valuation of goods by the Customs Officers. In the representation, the detenu has specifically stated that the detaining authority admitted the value as fixed by the Customs Department being on the higher side. In the same representation, the petitioner has pointed out that in another case, viz., O.S.No.287 of 2005, very same Officers fixed the value of Nikon Speed light SB 800 Flash gun with accessories at Rs.7,100/-, whereas the same property has been valued at Rs.9,000/- per piece in the case of the detenu. He also referred to the order of the Additional Chief Metropolitan Magistrate, Chennai directing the sponsoring authority to refix the value of the seized goods. In the reply dated 17.07.2006, the State Government without adverting to those specific details, has merely stated that his representation was duly considered and rejected as there was no valid ground to accept.

6. The Courts have oft-repeatedly held that consideration of representation is not an empty formality, particularly when several details, such as orders/valuation fixed in respect of similar goods by the authorities are referred and it is but proper on the part of the Government to get the remarks from the officers concerned and pass a speaking order in one way or the other. We are satisfied that such recourse has not been followed in the present case. As observed earlier, even the Department has not complied with the order of the Additional Chief Metropolitan Magistrate, but only filed a revision before this Court belatedly wherein no interim order has been obtained.

7. The learned senior counsel for the petitioner has also brought to our notice, the notification of the Government of India, Ministry of Finance, Office of the Commissioner of Customs (Airport) in O.S.No.287 of 2005 - AIR dated 30.06.2005, wherein the Joint Commissioner of Customs (AIR), Anna International Airport, Chennai has fixed the value of Nikon Speed light SB 800 Flash gun with accessories at the rate of Rs.7,100/- per unit, whereas the same product was valued at the rate of Rs.9,000/- in the case of the detenu. For that, there is no explanation at all on the side of the respondents. It is also brought to our notice that the above referred order of the Joint Commissioner of Customs dated 30.06.2005 became final and the Customs authorities accepted the said valuation. In this regard, it is brought to our notice the decision of the Calcutta High Court in the case of Ghanshyam Chejra vs. Collector of Customs reported in 1989 (44) ELT 202 (Cal.), wherein it is held that,

> "28. ..... Once the Customs Authorities have accepted the valuation, they should be bound by their precedents and estopped from acting to the contrary".

We are in agreement with the said conclusion.

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8. It is also relevant to note that even in the grounds of detention in para 1 (xvi) the detaining authority has stated,

> "that the Government have taking into consideration the averments / contentions contained in the representations and bail petition, but from the materials placed on record, the Government are satisfied that the same are baseless, devoid of merit and hence the Government reject the same except the portion regarding valuation of goods."

The above conclusion amply shows that in so far as the valuation of goods is concerned, the detaining authority also accepted that the assessment by the Department is excessive and not correct.

9. All the above mentioned material aspects have not been duly considered by the detaining authority while passing the order of detention. In view of the above said infirmities, we are satisfied that the detention order is liable to be interfered with. On this ground, the order of detention impugned in the petition is set aside and the detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
   State of Tamil Nadu
   Public (SC) Department
   Fort St. George
   Chennai 60 009.

2. The Secretary to the Government
   The Union of India
   Ministry of Finance,
   Department of Revenue
   (COFEPOSA-UNIT), New Delhi.

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3. The Superintendent of Central Prison
   Central Prison
   Chennai.

4. The Public Prosecutor,
   High Court, Madras.

5. Mr.P.Kumeresan, ACGSC,
   High Court, Madras.

6. The Joint Secretary to Government,
   Public (Law and Order),
   Fort St. George, Chennai- 9.

7. The Sub Assistant Registrar,
   COFEPOSA Section,
   High Court, Madras.

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HPR(CO)
RVL 04.10.2006

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